

AMENDED IN ASSEMBLY APRIL 21, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2848

Introduced by Assembly Member Hernandez

February 22, 2008

An act to ~~amend Section 7028 of~~ *add Section 3151* to the Business and Professions Code, relating to ~~contractors~~ *optometrists*.

LEGISLATIVE COUNSEL'S DIGEST

AB 2848, as amended, Hernandez. ~~Unlicensed contractors: restitution.~~
Optometrists: retired licenses.

Existing law, the Optometry Practice Act, provides for the licensure and regulation of optometrists by the State Board of Optometry and makes a violation of the act a crime. Existing law requires the board to adopt regulations requiring licensees to complete continuing education as a condition of license renewal, as specified. Existing law also conditions the renewal of a license on payment of a specified renewal fee.

This bill would exempt a licensee from continuing education requirements and payment of the renewal fee if he or she applies to the board for a retired license. The bill would prohibit the holder of a retired license from engaging in the practice of optometry. Because a violation of this provision would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law, the Contractors' State License Law, provides for the licensure and regulation of contractors by the Contractors' State License Board. Existing law makes it a misdemeanor for a person to engage in the business or act in the capacity of a contractor without having a license. Existing law requires a court to order a defendant convicted of a crime to pay restitution to the victim, as specified.~~

~~This bill would require that restitution ordered following an unlicensed contractor conviction include all payments made to, or at the direction of, the unlicensed contractor and not be offset or reduced by any act or performance.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3151 is added to the Business and
2 Professions Code, to read:

3 3151. A licensee is exempt from continuing education
4 requirements and payment of the renewal fee if the licensee has
5 applied to the board for a retired license. The holder of a retired
6 license may not engage in the practice of optometry.

7 SEC. 2. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 the only costs that may be incurred by a local agency or school
10 district will be incurred because this act creates a new crime or
11 infraction, eliminates a crime or infraction, or changes the penalty
12 for a crime or infraction, within the meaning of Section 17556 of
13 the Government Code, or changes the definition of a crime within
14 the meaning of Section 6 of Article XIII B of the California
15 Constitution.

16 SECTION 1. ~~Section 7028 of the Business and Professions~~
17 Code is amended to read:

18 7028. (a) It is a misdemeanor for a person to engage in the
19 business or act in the capacity of a contractor within this state
20 without having a license therefor, unless the person is particularly
21 exempted from the provisions of this chapter.

22 (b) ~~If a person has been previously convicted of the offense~~
23 described in this section, unless the provisions of subdivision (c)

1 are applicable, the court shall impose a fine of 20 percent of the
2 price of the contract under which the unlicensed person performed
3 contracting work, or four thousand five hundred dollars (\$4,500),
4 whichever is greater, and, unless the sentence prescribed in
5 subdivision (c) is imposed, the person shall be confined in a county
6 jail for not less than 90 days, except in an unusual case where the
7 interests of justice would be served by imposition of a lesser
8 sentence or a fine. If the court imposes only a fine or a jail sentence
9 of less than 90 days for second or subsequent convictions under
10 this section, the court shall state the reasons for its sentencing
11 choice on the record.

12 (c) A third or subsequent conviction for the offense described
13 in this section is punishable by a fine of not less than four thousand
14 five hundred dollars (\$4,500) nor more than the greater amount of
15 either ten thousand dollars (\$10,000) or 20 percent of the contract
16 price under which the unlicensed person performed contracting
17 work or by imprisonment in a county jail for not more than one
18 year or less than 90 days, or by both that fine and imprisonment.
19 The penalty provided by this subdivision is cumulative to the
20 penalties available under all other laws of this state.

21 (d) In the event the person performing the contracting work has
22 agreed to furnish materials and labor on an hourly basis, “the price
23 of the contract” for the purposes of this section means the aggregate
24 sum of the cost of materials and labor furnished and the cost of
25 completing the work to be performed.

26 (e) Notwithstanding any other provision of law to the contrary,
27 an indictment for any violation of this section by the unlicensed
28 contractor shall be found or an information or complaint filed
29 within four years from the date of the contract proposal, contract,
30 completion, or abandonment of the work, whichever occurs last.

31 (f) For any conviction under this section, restitution ordered
32 pursuant to subparagraph (B) of paragraph (3) of subdivision (a)
33 of Section 1202.4 of the Penal Code shall include, but not be
34 limited to, all payments made to, or at the direction of, the
35 unlicensed contractor and shall not be offset or reduced by any act
36 or performance.